



Department of
**Environment &
Conservation**

THE OLE *PAY and CHASE* ... HOW UST HAS REDUCED THEIR RISK

Presented to
Environmental Show of the South

May 16, 2018

INTRODUCTION



- Melinda Weir, CFE
 - Environmental Investigator
 - TDEC
 - 20 Years State Service
 - B.S. Political Science
 - MCJ Criminal Justice
 - ASTSWMO SF-FR Task Force
 - Former Chapter President

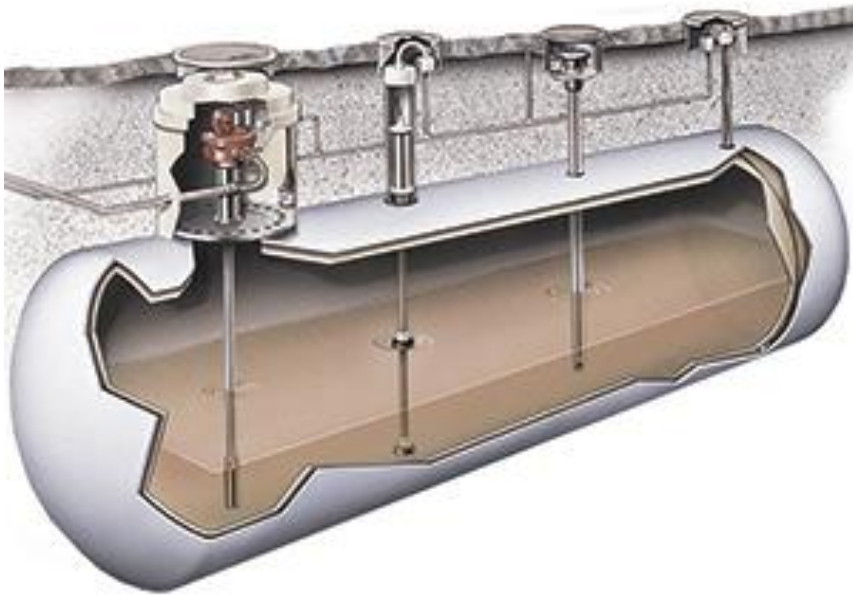
OVERVIEW OF PRESENTATION

- Description of Underground Storage Tanks (USTs)
- Laws and Historical Data Related to USTs
- TNDEC UST Program Integrity Initiatives
- Issues Identified
- Program Integrity Processes

UST MISSION STATEMENT

- The mission of the Division of Underground Storage Tanks is
 - to protect human health and environment by preventing future petroleum underground storage tank releases and remediating existing petroleum underground storage tank contamination.

WHAT IS AN UNDERGROUND STORAGE TANK?

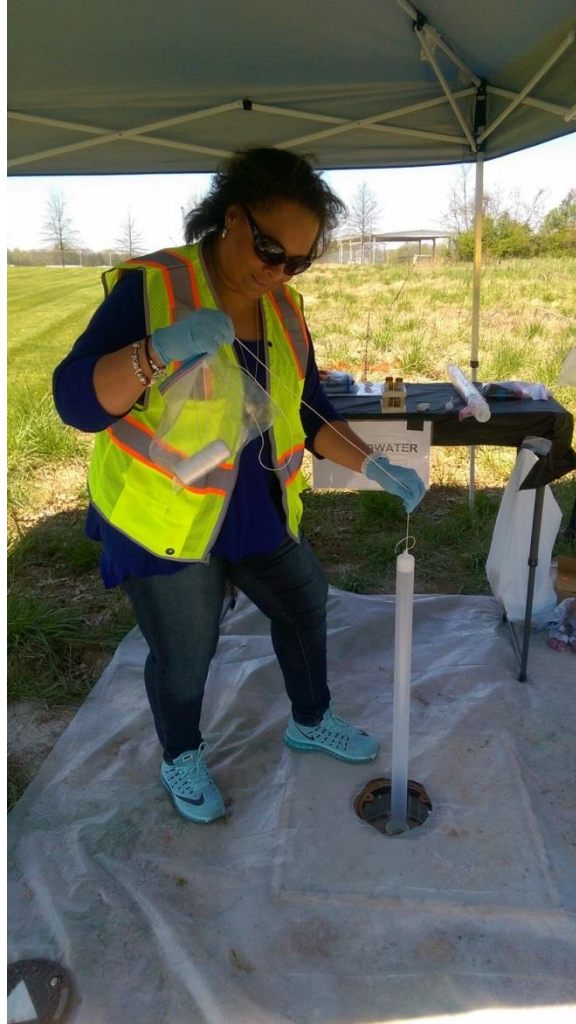


WHAT IS A LEAKING UNDERGROUND STORAGE TANK?



- Until the mid-1980s, most USTs were made of bare steel, which is likely to **corrode** over time and allow UST contents to **leak into the environment**. (Approximately 555,000 USTs nationwide)
- **Faulty installation or inadequate operating and maintenance** procedures also can cause USTs to release their contents into the environment.
- The **greatest potential hazard** from a leaking UST is that the petroleum or other hazardous substance can seep into the soil and **contaminate groundwater**, the source of drinking water for nearly **half of all Americans** (and potential for fire and explosion)

TESTING FOR CONTAMINATION



TESTING FOR CONTAMINATION



The logo consists of a red square with the letters 'TN' in white, serif font. Below the red square is a thin, dark blue horizontal bar.

TN

TM

LAWS AND RULES

T.C.A 68-215-102 - LEGISLATIVE INTENT

- **(a)** In order to protect the public health, safety and welfare, to prevent degradation of the environment, conserve natural resources and provide a coordinated statewide underground storage tank program, it is declared to be the public policy of the state of Tennessee to regulate underground storage tanks and to:
 - **(5)** Provide a comprehensive investigation and clean-up fund to address the problems caused by releases from petroleum underground storage tanks ...
- “shall not apply retroactively to releases or other events that occurred prior to July 1, 1988.”

T.C.A 68-215-104 - UNLAWFUL ACTIONS

- It is unlawful to:
 - **(4)** Receive, or to attempt to **receive reimbursement** from the petroleum underground storage tank fund **in a fraudulent manner**;
 - **(7)** **Submit** to the department any document, in written or electronic format, known to be **false** or known to contain any materially false, fictitious or fraudulent statement or entry; knowingly make any materially false, fictitious, or fraudulent **statement or representation**; or knowingly falsify, conceal, or cover up a material fact.

COMMISSIONER'S RESPONSIBILITY

- There is a departmental leadership responsibility to reduce fraud, waste and abuse
- Program Integrity/Risk Assessment is Commissioner's responsibility for which he has statutory authority

STATUTORY MANDATE (RISK ASSESSMENTS)

- 2008 Tennessee Financial Integrity Act §9-18-102 (b)
 - each agency of state government and institution of higher education shall annually perform a management assessment of risk.
 - The objectives of the annual risk assessment are to provide reasonable assurance of the following:
 - 2) Promoting operational efficiency and effectiveness ;
 - 5) Reducing the risk of financial or other asset losses due to fraud, waste and abuse.
- First UST Fund Risk Assessment completed November 2007

STATUTORY MANDATE (Reporting)

- Reporting to Comptroller §8-4-119 (a)
- State agency required to report “fraud and any other intentional act of unlawful or unauthorized taking or abuse of public money....”

REGULATORY AUTHORIZATIONS

- In addition to Commissioner's statutory authority
- Over the past 28 years, Board has promulgated series of rules requiring cooperation with audits
 - **1990** The UST rules contain the beginnings of **requirements for records** related to investigations and cleanups **to be maintained**.
 - **1998** The rules contain the **requirement to comply with audits** for Corrective Action and Third Party Claims
 - **2011** The Board expanded records requirement. The rule **adds the requirement for "or petroleum site owner"** and **clarifies CAC's cooperation with audits** of corrective action costs.

1990 BOARD PROMULGATED RULE

1200-1-15-.09(11) Requirements for Fund Coverage of Corrective Action Costs

- (k) The owner or operator or the selected corrective action contractor **shall keep and preserve detailed records** demonstrating compliance with approved investigative and corrective action plans **and all invoices and financial records associated with costs for which reimbursement will be requested.** These records shall be kept for **at least three years** after corrective action has been completed at the site.

1998 BOARD PROMULGATED RULE

- 1200-1-15-.09(11) Requirements for Fund Coverage of Corrective Action Costs
- (r) The tank owner and/or operator, and his/her representative or Corrective Action Contractor, shall gather and maintain documentation and records necessary to verify the necessity for any implemented corrective action and any claim for reimbursement from the Fund. Further, the tank owner and/or operator, and his/her representative or **Corrective Action Contractor, shall fully cooperate with any audit which the Commissioner, or his authorized representatives, conducts** to verify the expenditures and costs contained within documentation submitted to the Department for reimbursement from the Fund. Therefore, the tank owner and/or operator, and his/her representative or Corrective Action Contractor, shall produce any records, data, documents, information and personnel for interviews as necessary in the Commissioner's determination to fully and completely conduct an audit.
- 1200-1-15-.09(16) Approval of Corrective Action Contractors
- (b)(2)(xiv) **The CAC will fully and completely cooperate with the Commissioner during any audit by the Commissioner or his authorized representative, and comply with rule 1200-1-15-.09(12)(f)**

2011 BOARD PROMULGATED RULE

- 0400-18-01-.09(10) Requirements for fund coverage of corrective action costs.
- (l) The owner and/or operator or petroleum site owner or the selected corrective action contractor shall keep and preserve detailed records demonstrating compliance with approved investigative and corrective action plans and all invoices and financial records associated with costs for which reimbursement will be requested. These records shall be kept for at least three (3) years after corrective action has been completed for a site.
- (r) The tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall gather and maintain documentation and records necessary to verify the necessity for any implemented corrective action and any claim for reimbursement from the fund. Further, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall fully cooperate with any audit which the commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the department for reimbursement from the fund. Therefore, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall produce any records, data, documents, information, and personnel for interviews as necessary in the commissioner's determination to fully and completely conduct an audit.

RECORDS ARE REQUESTED FOR DIFFERENT REASONS

Fund Reimbursement

- Supplemental documentation for application clarification
- Program Integrity investigation

Appeals

- Contested case discovery by an attorney, any disputes are & always have been resolved by Administrative Law Judges (ALJs).



PROGRAM INTEGRITY INITIATIVES

TNDEC UST

- UST has a very healthy cleanup fund
- Approximately 20 Corrective Action Contractors (CACs) provide contamination cleanup work for UST
- Approximately 156 active cleanup sites remaining in TN
- UST pays up to \$2 million per cleanup site
- Lots of potential for inappropriate billing

WHY UST OBTAINED AN ENVIRONMENTAL INVESTIGATOR

- In 2010 TDEC OGC and UST officials reached out to the State Comptroller's Office for assistance
- That assistance resulted in a successful \$6.5 settlement with a major oil company
- UST quickly began taking steps to secure a Certified Fraud Examiner to develop and implement a UST specific fraud, waste and abuse prevention program *
- The Environmental Investigator (me) began developing the UST Program Integrity Plan in January 2014



ISSUES IDENTIFIED

ISSUES IDENT/SUSPECTED BY AUDITORS (Pre-Investigator) *

- Double-billing
- Consistent time frames
- Patterns – repetitive task
- Claiming different titles
- One contractor in multiple locations at the same time on the same day

AUDITING SOFTWARE

- UST purchased ACL to help in detecting red flags
- Software that takes recurring tasks, extracts data and performs data analytics (audit functions)
- Runs analysis for exceptions (looks for red flags)
- Data is exportable to excel
- Certified ACL Specialist

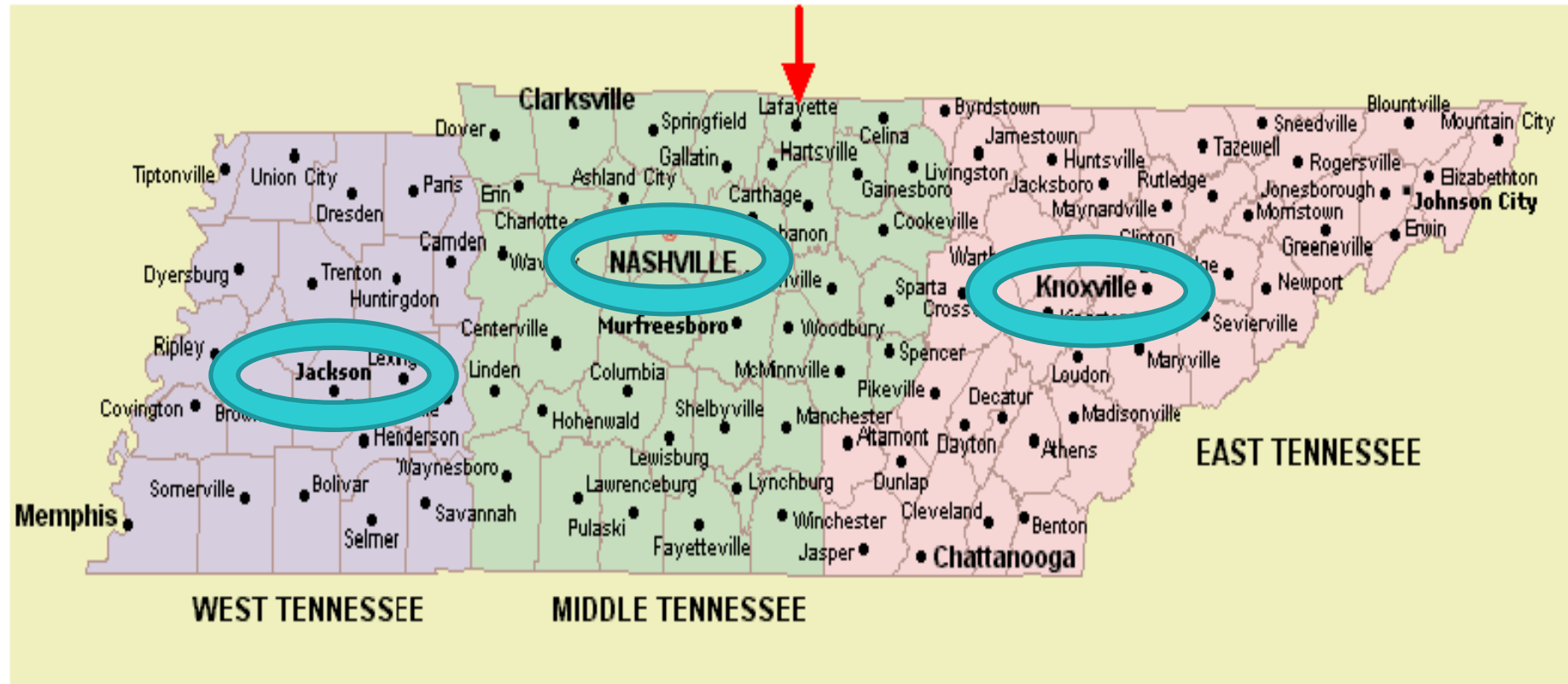
DOUBLE BILLING

Date	Site	Task	Type Time	Start Time	End Time	Hrs	Comments
11/5/13	A	Non routine O&M	Travel To	10:00	12:00	2	Double billing 2 hrs
	B	Well Development	Travel From	10:00	12:00	2	
11/7/13	C	Well Abandon	On Site	4:00	6:00	2	Double billing 2 hrs
	D	Water Levels	Travel From	4:00	8:00	4	
11/20/13	E	Routine O&M	On Site	7:00	8:00	11	Double billing 4 hrs
	F	Wellhead Install	Travel From	4:00	8:00	4	
12/4/13	G	GW Sampling	Travel To	6:00	9:00	3	Double billing 2 hrs
	H	Vapor Monitoring	On Site	8:00	10:00	2	
12/9/13	I	Site Recon	On Site	8:30	7:30	11	Double billing 3.5 hrs
	J	Site Recon	On Site	12:00	3:30	3.5	

MULTIPLE BILLABLE TITLES

Employee	Date	Start Time	End Time	Hrs	Hrly Rate	Total	Type	Billable Title	Task
B Jones	6/3/13	7:00	7:30	0.5	\$80.00	\$40.00	Office	Proj Mgr	CAS Data Review
B Jones	6/10/13	8:00	7:30	0.5	\$80.00	\$40.00	Office	Proj Mgr	CAS Data Review
B Jones	6/17/13	9:00	9:30	0.5	\$45.00	\$22.50	Office	Sr Tech	CAS Data Review
B Jones	6/24/13	9:00	9:30	0.5	\$45.00	\$22.50	Office	Sr Tech	CAS Data Review
B Jones	7/1/13	7:30	8:00	0.5	\$55.00	\$27.50	Office	CAS Spec	CAS Data Review
B Jones	7/8/13	8:30	9:00	0.5	\$55.00	\$27.50	Office	CAS Spec	CAS Data Review
B Jones	7/15/13	8:30	9:00	0.5	\$45.00	\$22.50	Office	Env Spec	CAS Data Review
B Jones	7/22/13	7:00	7:30	0.5	\$45.00	\$22.50	Office	Env Spec	CAS Data Review

SAME STAFF ACROSS THE STATE



OTHER ISSUES

- Deductible
- Trench
- Electronic Field Log
- Telemetry
- Milk Runs

DEDUCTIBLE ISSUE

- 68-215-111 (f)(4) - Use of fund....
 - The amount of the deductible that must be incurred by either the tank owner or operator or the owner of the petroleum site, before the tank owner or operator or the owner of the petroleum site is eligible to receive reimbursement from the fund
- Perjury statement on signature forms
- Attorney's got involved

DISCHARGE TRENCH INVOICE

XXX Inc.					Invoice # :	562979
Cleveland, TN 37312					Project :	1684101197
					Project Name:	Cleveland Install
					Invoice Date:	1/30/2013
For Professional Services Rendered through: 2/2/2013						
Scope of Services: Invoice for Activities Associated with CAS Install						
Phase Code / Name			% of Contract	Phase Fee	% Complete	Total Fee Earned
4.4.a.5 CAS WELL TRENCH INSTALL			55.35	\$11,917.00	100.00	\$11,917.00
4.4.a.6 WELL HEAD /VAULT INSTALLATION			30.19	\$6,500.00	100.00	\$6,500.00
4.4.a.7 CAS INLET MANIFOLD INSTALL			3.32	\$714.24	100.00	\$714.24
4.4.a.10 CAS DISCHARGE TRENCH INSTALL			11.15	\$2,400.00	100.00	\$2,400.00
			Total Fee:	\$21,531.24		
* 96' @\$25/ft				Total Fee Earned to Date		\$21,531.24
				Less Previous Billings		\$0.00
				Amount Due This Invoice		\$21,531.24

UNDERGROUND TRENCHING? \$2,400 VS. \$100 PVC



TYPICAL FIELD LOG

Corrective Action System Field Log

Page 1

Date of visit: 3/22/13		Time of visit	
Facility ID #: 9-790081		Arrival: 8:30	
Facility name: FORMER BEN J. MALONE		Departure: 1:30pm	
Facility address: 1024 Marble Ave - Memphis		Total time: 5.0	
Facility telephone #			
Personnel onsite:			
Name: G. Holley	Company: Sewi's Inc	Billing title: Cas	
Name: A. Hoppin	Company: Sewi's Inc	Billing title: Cas	
Name:	Company:	Billing title:	
Describe the weather conditions: 42 Cloudy rainy			
Applicable permits: <input type="checkbox"/> NPDES <input checked="" type="checkbox"/> POTW <input type="checkbox"/> Air <input type="checkbox"/> Other:			
Was the corrective action system (CAS) operating upon arrival?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Did the telemetry report the system down?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If the CAS was not operating, then explain [include telemetry code(s) and key, if applicable]:			
Was the CAS repaired?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Was a CASRL completed?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
Was CAS operating upon departure?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
If upon departure the corrective action system was not operating, then explain why:			
Electronic controls functioning properly?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Oil/water separator operating? Describe in comments section below.		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Volume of free product recovered since last visit, if applicable:		gallons	

COMPUTERIZED CLOSURE CHECKLIST

- **Clean and dewater bag filter (checked)**
- **Clean and dewater Stripperator (checked)**
- **Remove electric meter (checked)**
- **Disassemble electric riser and place in CAS (checked)**

Corrective Action System Deactivation Checklist

Facility ID #:	3-040017	CAP approval date:
Facility name:	Bledsoe Bus Garage	CAS TDEC Tag ID#:04-2010-111
Facility address:	244 Sequatchie Road, Pikeville	CAS manufacturer ID #:04-2010-353
		CAS activation date: 8/2/2010
Facility (CAS) telephone #:	423-447-7281	CAS Deactivation date: 12/20/2013
CAC completing checklist:	Environmental	
Person(s) completing checklist	Tim	Time onsite: 0730 Time offsite: 1030
CAS Deactivation Tasks:		
Clean and dewater bag filter vessel(s)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A
Clean and dewater Stripperator	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A
Clean aeration tubes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A
Clean and dewater oil/water separator	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A
Clean coalescing packing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A

Terminate electric account	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Remove electric meter	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Disconnect and remove electric line to CAS	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Disassemble electrical riser and place in CAS	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A

CLEANED AND DRY??

BAG FILTER VESSEL



STRIPPERATOR



ELECTRIC ITEMS REMOVED AND DISASSEMBLED?

Electric meter removed.. No!

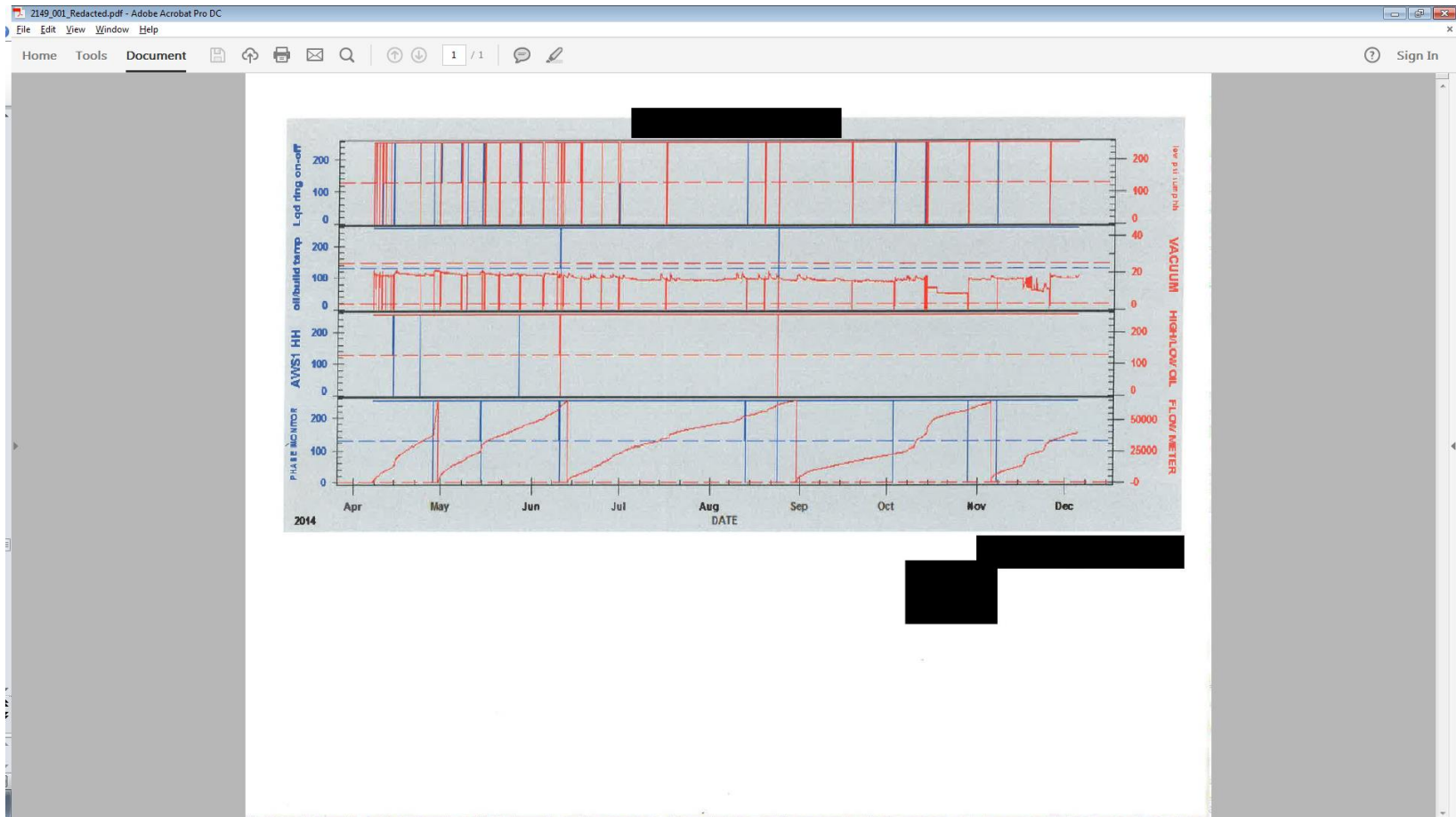


Disassembled and placed in CAS..NOPE!



ACTIVE TELEMETRY

- Submitting reimbursement requests for inactive systems



TELEMETRY FINDINGS

“MILK RUNS”

- Typical with contractors working multiple sites in the same area
- “Town hall meeting”
- Interviews with CAC and Regional Director
- OGC involvement



PROGRAM INTEGRITY PROCESSES

PROGRAM INTEGRITY PROCESSES

- Red flag identified
 - Auditor conducts reviews
 - Contacts field offices
 - Pulls files
 - Fund manager sends out a “Nona” letter with attachments including evidence of overpayment
 - Money is repaid or “Melinda” letter goes out
 - Usually repays at this stage, but if not ...
 - OGC sends a letter requesting repayment before legal action is taken

INVESTIGATIONS FLOW CHART

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PROGRAM INTEGRITY TRIAGE SYSTEM

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HOW THIS APPROACH HAS BEEN SUCCESSFUL

- Since Program Integrity's Inception
 - Developed processes to handle program integrity issues
 - Developed a database specifically for program integrity *
 - Developed specialized fraud training held on a monthly basis
 - Improper reimbursement request submissions have gone down over 70%
 - 90.2% improper funds paid to CAC's have been repaid to the fund

MULTIFACETED APPROACH

- CAC Training *
 - As needed
- Reimbursement Staff Fraud Training *
 - Monthly
 - As needed
- ACL Software *
- Ongoing meetings
 - OGC
 - TDEC Internal Audit Director
- Monthly meetings
 - With TDEC OGC

ASTSWMO

- Association of State and Territorial Solid Waste Management Officials (ASTSWMO)
- An organization representing the 50 States, 5 Territories and the District of Columbia
 - Enhance and promote effective State and Territorial programs
 - To affect relevant national policies for waste and materials management, environmentally sustainable practices, and environmental restoration.

MY ROLE IN ASTSWMO

- Ten representatives on the State Fund-Financial Responsibility Task Force
 - Task force member for the ASTSWMO Tanks Subcommittee
 - Represent Region 4
 - Our job is to interact and communicate with officials at the U.S. EPA on issues pertaining to its regulation and oversight of State petroleum UST programs *



WORKING WITH OTHER STATES

- California
- Indiana
- Nevada
- Nebraska
- Arizona

PROGRAM INTEGRITY MISSION AND GOAL

- **Mission**

- To resolve issues that will help protect UST resources while providing anti-fraud education for management and staff

- **Goal**

- To create an awareness of detection and proactively reduce the risk of potential opportunities to commit fraud



QUESTIONS?